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Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Steven E. Borchert	)
	)
Petitioner	)
	)
v.	)
	)
United States	)
	)
Respondent	)

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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Questions Before This Court

What are the specifications concerning about whom a summons can issue under 26 USC 7602(a)?

Is the language presented in 26 USC 7602 a rendering of, and subordinate to, the specifications as expressed in the IRC of 1939?

List of Parties

All parties appear in the caption of the case on the cover page.

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Fourth Amendment	1,2,5

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Code Reference

1939 IRC	i, 2, 3, 4, 5
26 USC 7602	i, 2, 3, 5
26 USC 7609	1, 2
28 USC 1254	1
28 USC 1291	1
28 USC 1340	1, 2

Case Reference

Donaldson v. United States, 400 U.S. 517, 522 (1971)	2,3
Fulman v. United States, 434 U.S. 528 (1978)	3,4
Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000)	4
United States v. LaSalle National Bank, 437 U.S. 298(1978)	3
Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985)	3,4

Miscellaneous

Table II of the report on Derivations Of Code Sections Of The Internal Revenue Codes Of 1939 And 1954 published on January 21, 1992 by the Joint Committee On Taxation, page 95	5

Citations

Both the District Court and the Seventh Circuit decisions were unreported.

Jurisdiction

On May 16, 2007 the Seventh Circuit Affirmed the judgment of the District Court.

On August 8, 2007 the Seventh Circuit entered an order denying the petition for rehearing en banc.

The statutory provision conferring jurisdiction to this Court to review this certiorari is 28 USC 1254.

The Seventh Circuit has jurisdiction as per 28 USC 1291.

The District Court has jurisdiction as per 28 USC 1340, and 26 USC 7609(h)(1) below:

The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

Constitutional Provisions

This ruling conflicts with the provisions and purposes of the Fourth Amendment to the United States Constitution.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Statement of Case

The current Internal Revenue Code declares itself to be a derivative of the 1939 IRC. This Court has upheld this to be true. The 1939 IRC is speeific about who may be summoned (1939 IRC Sec. 3615). The ruling being contested here does not apply the same constraints as to who may be summoned. The contested ruling examines the language of the current IRC 7602(a) without recognizing the current IRC's own declaration of being a derivative of the 1939 IRC, nor does it recognize this Court's acknowledgement of this fact. Respondent has referenced several cases that challenge the "purpose" element of 26 USC 7602(b), but no case challenging the "any person" element of 26 USC 7602(a).

The basis for federal jurisdiction for the court of first instance is 26 USC 7609(h)(1) and 28 USC 1340.

Reasons for Granting the Petition

The Seventh Circuit decision before this Court, conflict with the following prior decisions made by this Court:

Donaldson v. United States, 400 U.S. 517, 522 (1971)

United States v. LaSalle National Bank, 437 U.S. 298(1978)

Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985)

Fulman v. United States, 434 U.S. 528 (1978)

1. The Seventh Circuit's decision conflicts with multiple United States Supreme Court precedents and numerous acts of congress.

The circuit's decision is at odds with the holdings of this Court in that the specifications concerning about whom a summons can issue under 26 USC 7602. The language presented in 26 USC 7602 is a rendering of the specifications as expressed in the IRC of 1939.

This Court declared,

"...[7602] has its ascertainable roots in the 1939 Code's 3614 and, also, 3615 (a)-(c)...";
Donaldson v. United States, 400 U.S. 517 (1971),

and,

"The legislative history of the Code supports the conclusion that Congress intended to design a system with interrelated criminal and civil elements. Section 7602 derives, assertedly without change in meaning, from corresponding and similar provisions in 3614, 3615, and 3654 of the 1939 Code.", referencing H. R. Rep. No. 1337, 83d Cong., 2d Sess., A436 (1954); S. Rep. No.

1622, 83d Cong., 2d Sess., 617 (1954);
United States v. LaSalle National Bank, 437 U.S. 298(1978)

and,

"...absent [substantive] comment it is generally held that a change during codification is not intended to alter the statute's scope. See Muniz v. Hoffman, 422 U.S. 454, 467-474 (1975)."
Walters v. Nat. Assn. of Radiation Survivors, 473 U.S. 305 (1985)

and,

"United States v. Ryder, 110 U.S. 729, 740 (1884): "It will not be inferred that the legislature, in revising and consolidating the laws, intended to change their policy, unless such intention be clearly expressed." Accord, Aberdeen & Rockfish R. Co. v. SCRAP, 422 U.S. 289, 309 n. 12 (1975); Muniz v. Hoffman, 422 U.S. 454, 467-472 (1975); Fourco Glass Co. v. Transmirra Corp., 353 U.S. 222, 227 (1957)."
Fulman v. United States, 434 U.S. 528 (1978).

Respondent references, but does not cite, *Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000)* and argues that the current version of the code is not a derivative of the 1939 code. Cites from this case are,

"Though both the Statutes at Large and the IRC could be said to be authoritative here...", and "The difference is irrelevant to the outcome of the case..."
Tax Analysts v. IRS, 214 F.3d 179 (D.C. Cir. 2000)

The current code declares itself to be a derivative of the 1939 Code. (Table II of the report on Derivations Of Code Sections Of The Internal Revenue Codes Of 1939 And 1954 published on January 21, 1992 by the Joint Committee On Taxation, page 95)

2. If the law really did attempt to extend the summons authority so as to concern "any person", it would be inherently at odds with the provisions and purpose of the Fourth Amendment.

If the authority to issue an IRS summons to examine books and records actually attempted to reach "any person", including those who had not knowingly and voluntarily waived his or her rights, that authority would be unconstitutional.

3. Importance of this case.

I believe this case is of high importance because the implications of the circuit decision could impact virtually every person in the United States. If the "any person" of 26 USC 7602(a) is not recognized as a derivative of the 1939 IRC Section 3615, it could be unconstitutionally applied to every American, instead of constitutionally applied to those as constrained by the 1939 Code.

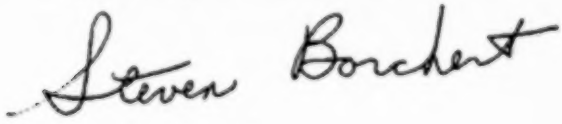
4. Other similar cases

There may be other cases similar to this one coming before this Court. I think it would be good to combine them as per rule 27.3

Conclusion

I respectfully pray this Honorable Court to grant this petition for writ of certiorari.

Respectfully submitted,



Steven E. Borchert

November 2, 2007

Appendix A

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted May 16, 2007*
Decided May 16, 2007

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 06-4418

STEVEN E. BORCHERT,
Plaintiff-Appellant,

Appeal from the United States District Court for the Northern District of Indiana, Lafayette Division

v.

No. 4:06-cv-140

UNITED STATES OF AMERICA,
Defendant-Appellee.

Allen Sharp,
Judge.

ORDER

Steven and Helen Borchert did not file federal income tax returns for 2001, 2002, 2003, or 2004. In 2006 the Internal Revenue Service issued four summonses to two banks for financial records relating to the Borcherts and two businesses in which they have an interest. The Borcherts received notice, *see* 26 U.S.C. § 7609(a), and petitioned to quash the summonses, *see id.* § 7609(b)(2). The district judge rejected the Borcherts' various arguments and denied their motion. Only Steven Borchert appeals.[2]

As he did in the district court, Borchert maintains that because he is not "engaged in the administration or enforcement of the income tax laws" he is not part of the "class of persons" that the IRS may use a third-party summons to investigate. According to Borchert, the IRS may investigate only its own personnel and not "any person," as 26 U.S.C. § 7602(a) provides, else it would violate the Fourth Amendment.

Borchert is wrong; "[f]or the purpose of.. . determining the liability of *any person* for any internal revenue tax.., the Secretary is authorized... [t]o summon ... any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax." 26 U.S.C. § 7602(a) (emphasis added); *see United States v. Ins. Consultants of Knox, Inc.*, 187 F.3d 755, 759 (7th Cir. 1999). Borchert insists that we disregard § 7602 because the Internal Revenue

Code has not been enacted as positive law, but it has, *see Tax Analysts v. IRS*, 214 F.3d 179, 183 n.1 (D.C. Cir. 2000). And the Supreme Court held long ago that the IRS's power to issue a third-party summons does not violate the Fourth Amendment rights of the person investigated. *See Donaldson v. United States*, 400 U.S. 517, 522 (1971). As long as the summons was issued in good faith—and Borchert has never contended that it was not—it must be enforced. *See United States v. Stuart*, 489 U.S. 353, 359-60 (1989); *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

Borchert also renews his contention that the IRS may collect tax only on income derived from a "revenue stream that is internally connected with the federal government." His argument is patently frivolous, and was rejected in a published opinion more than twenty years ago. *See Motes v. United States*, 785 F.2d 928, 928 (11th Cir. 1986) (per curiam). The Sixteenth Amendment plainly authorizes Congress to collect taxes on income "from whatever source derived," U.S. Const. Amend. XVI; *see Lovell v. United States*, 755 F.2d 517, 519 (7th Cir. 1984).

The government asks that we sanction Borchert for abusing the judicial process by filing a frivolous appeal. *See* Fed. R. App. P. 38. We have set $4,000 as the presumptive penalty for a frivolous tax-protestor case, *see Szopa v. United States*, 460 F.3d 884, 887 (7th Cir. 2006), and we agree with the government that this sanction is appropriate here. *See Ins. Consultants of Knox*, 187 F.3d at

761-62 (sanctions warranted where tax protestor "made no attempt whatsoever to explain why we should reverse almost a century of caselaw").

Accordingly, we AFFIRM the judgment of the district court and GRANT the government's motion for sanctions in the amount of $4,000.

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. The appeal is submitted on the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

2 Steven Borchert signed the notice of appeal on behalf of both himself and his wife. The rules of procedure allowed this preliminary step, *see* Fed. R. App. P. 3(c)(2), but Steven Borchert is not a lawyer and cannot represent Helen Borchert in this appeal. *See Malone v. Nielson,* 474 F.3d 934, 937 (7th Cir. 2007) (per curiam); *Muzikowski v. Paramount Pictures Corp.,* 322 F.3d 918, 924 (7th Cir. 2003); *Navin v. Park Ridge Sch. Dist.,* 270 F.3d 1147, 1149 (7th Cir. 2001) (per curiam). Since she did not sign his brief or file one of her own, we have dismissed her from the appeal.

Appendix B

U.S. District Court Northern District of Indiana [LIVE]

NORTHERN DISTRICT OF INDIANA

Notice of Electronic Filing

The following transaction was received from csi, entered on 11/2/2006 at 11:52 AM EST and filed on 10/30/2006

Case Name:	Borchert et al v. United States of America
Case Number:	4:06-mc-i
Filer:	
Document Number:	12

Docket Text:

MOTION HEARING held on 10/30/2006 re [1] MOTION to Quash filed by Steven Borchert, Helen E Borchert, before Judge Allen Sharp. Pla appeared by atty Johnson. Dft appeared by Steven & Helen E. Borchert, Pro Se. USA witness: Douglas Gustafson (IRS Revenue Agent). Petition to Quash is without merit. Motion to quash is denied. (9:05-10:25) (Court Reporter Hoffman.) (csi,)

Appendix C

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

August 8, 2007

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 06-4418	Appeal from the United States District Court for The Northern District
STEVEN E. BORCHERT, *Plaintiff-Appellant,*	of Indiana, Lafayette Division.
v.	No. 4:06-cv-140
UNITED STATES OF AMERICA, *Defendant-Appellee.*	Allen Sharp, *Judge.*

ORDER

On consideration of the petition for rehearing en banc, no judge in active service has requested a vote on the petition for rehearing en banc. It is therefore ordered that the petition for rehearing en banc is DENIED.

Appendix D

"SEC. 3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

(a) GENERAL AUTHORITY.—It shall be lawful for the collector, subject to the provisions of this section to summon any person ..., respecting any objects or income liable to tax or the returns thereof. The collector may summon any person residing ...

(b) ACTS CREATING LIABILITY.—Such summons may be issued—

(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books."

Appendix E

1954 Code Section	Derived from 1939 Code Section
7602	3614; 3615 (a), (b), (c); 3632 (a) (1)